

Alternative Dispute Resolution (ADR)/Conflict Prevention Program (natural resources, workplace, and contracting programs) FY '06 PTA

CONGRESSIONAL AND RELATED DIRECTION

- Congressional Direction - The Administrative Dispute Resolution Act requires that “agencies” shall carry out the following mandates. (The BLM has been identified in the SOL’s Office as an “agency” and thus is required to conform with the requirements of the Act.)
 - Develop a policy that addresses the use of alternative means of dispute resolution (ADR in the Bureau and the Department) and case management in connection with: formal and informal adjudications, rulemakings, enforcement actions, issuing and revoking licenses and permits, contract administration, litigation, and other agency actions (the **ADR/Conflict Prevention Program** in the Bureau);
 - Establish the position of bureau dispute resolution specialist (titled Bureau Dispute Resolution Manager in BLM);
 - Ensure that the bureau dispute resolution specialist is responsible for implementing the Administrative Dispute Resolution Act and for developing and implementing the agency’s policy on alternative means of dispute resolution and case management;
 - Provide training on a regular basis for employees involved in using alternative means of dispute resolution, for the dispute resolution specialist, and for other employees as recommended by the dispute resolution specialist. The training should encompass the theory and practice of ADR-based conflict management strategies [including negotiation, mediation, facilitation, and others].

“Alternative means of dispute resolution” is defined as “any procedure that is used to resolve issues [potentially or actually] in controversy, including but not limited to...facilitation, mediation, fact-finding...and use of ombuds...”

(Sources: Administrative Dispute Resolution Act of 1990, P.L. 101-552 (signed by President George H.W. Bush), as amended in 1996, P.L. 104-320, and in 1998)

- Western States’ Policies and Laws Impacting the Bureau - Resolution of the Western Governors Association on *Enlibra*, and most States’ statutes.
- Executive Branch Direction - “Each Federal agency must promote greater use of ADR techniques. Every agency should have an ADR program.”

(Sources: Executive Orders, Secretarial and other Memoranda, and letters from Attorneys General in the Administration of President George W. Bush and past Administrations)

- Departmental Direction - The Department has directed that each bureau develop an ADR Plan and establish a position of dispute resolution specialist, in compliance with the Administrative Dispute Resolution Act and in support of the Secretary’s 4 C’s vision. Also, in accordance with the recommendations of a Federal inter-agency report, the Department has required that all bureaus mirror its ADR staffing. The Department established in the Washington Office the positions of Departmental Dispute Resolution Specialist and staff, comprising an Office of Collaborative Action

and Dispute Resolution. In addition, the Department established an Interior Dispute Resolution Council (IDRC), comprised of ADR representatives from each bureau.

In response to the Department's direction and in furtherance of the 4 C's, the Bureau has developed, as part of its core mission, a pro-active ADR Program and Plan. In compliance with the Department's direction to mirror their ADR staffing and in conformance with the Administrative Dispute Resolution Act, the Bureau established positions in the Washington Office of Bureau Dispute Resolution Manager and Dispute Resolution Specialist. Reflecting the structure of the IDRC, the Bureau established an ADR Advisory Council on which each state is represented, as set out in IM 2004-159.

- Bureau Mandates for the ADR/Conflict Prevention Program - IM 2004-159 establishes the BLM's ADR/Conflict Prevention policy mandates. The Program's core mission is to support Bureau actions and decision making in serving as the national lead for –
 - 1) Developing, and providing oversight for, national natural resources ADR and conflict prevention policy initiatives, national models, and reporting methodologies focusing on strategies and parameters for:
 - Bureau involvement in ADR-based collaborative community/stakeholder working groups;
 - Bureau engagement with communities and the general public, including Tribal and State governments, using ADR-based innovative approaches to early public involvement and consensus-based dialogue including interest-based, place-based, and deliberative dialogue;
 - (helping to) prevent, resolve, or mitigate the impacts of litigation, appeals, and protests through the use of ADR initiatives that have been demonstrated to be significantly more cost-effective than traditional approaches;
 - (electronic) communication with the public and within the Bureau on BLM's ADR initiatives -- through ADR websites, a natural resources ADR activities data base, and computer-based training;
 - credentialing of ADR professionals, including internal Bureau facilitators
 - reporting on Bureau ADR accomplishments to the Department and the Administration;
 - liaison with national external resources groups that represent western communities interested in enhanced ADR-based public involvement with the Bureau.
 - 2) Developing strategies for Bureau implementation of the Department's workplace and contracting/acquisition ADR program initiatives in concert with Bureau workplace and contracting/acquisition specialists.

In natural resources, workplace, and contracting/ acquisition ADR, Bureau emphasis is on conflict prevention and early resolution.

The BLM's ADR/Conflict Prevention Program is responsible for developing national ADR policy within a framework reflecting a spectrum beginning with conflict prevention (referred to as "upstream ADR"), spanning through conflict management ("downstream ADR" -- where a conflict has arisen), and ending with conflict resolution (where the parties reach final agreement, a dispute is settled, impacts are mitigated, or the conflict is otherwise fully resolved). At all points on the spectrum, ADR involves a mediator/facilitator. Well recognized ADR strategies include: innovative, early public involvement; consensus-based dialogue; interest-based negotiation and mutual gains bargaining; mediation and facilitation; joint fact finding; conflict assessment; problem solving; and other formal and informal ADR strategies.

IM 2004-159 also sets out Bureau-wide ADR training requirements for managers, supervisors, and “appropriate staff” and the roles of the ADR Advisory Council; the ADR Manager-Advisors; the Natural Resources ADR Advisors; the Workplace ADR Advisors; and the Washington Office position of Bureau Dispute Resolution Manager.

- Other Bureau Natural Resources National ADR Policies include the Bureau’s policy on: FACA; IBLA’s ADR Case Referral Program; and ADR-based innovative public involvement strategies.

(Sources: BLM’s IM 2004-159; Departmental Federal Register Notice establishing DOI’s ADR Policy; and Report of an Interagency Task Force on ADR in the Department of the Interior).

SUMMARY OF PERFORMANCE

- BLM’S ADR Advisory Council - The Council has been restructured to include ADR Manager-Advisors from each State and a Natural Resources ADR Sub-group and a Workplace ADR Sub-group. One State has not yet nominated a Workplace ADR Advisor and an ADR Manager-Advisor. Another State has not yet nominated a Workplace ADR Advisor. These States should note the last bullet under **Bureau Direction** regarding expected nominations. All States have designated Natural Resources ADR Advisors.
- Managers’ ADR/Conflict Prevention Training - One State has already conducted the training as part of a State Leadership Team meeting. Other States are reviewing options for scheduling the training in FY ’06. A couple of States are not yet considering the mandatory training. All States that have not yet scheduled the training should note the eighth bullet under **Bureau Direction** regarding expected scheduling.

BUREAU DIRECTION

- ADR/Conflict Prevention Policies in Bureau Natural Resources Decision making and Workplace Procedures - All States shall ensure that ADR/Conflict Prevention policies and strategies are incorporated at appropriate stages of the resources and workplace decision making processes. The emphasis in Bureau decision making and processes shall be on prevention or early resolution of a conflict or dispute wherever possible through early engagement.
- Natural Resources ADR/Conflict Prevention National Policy Needs - All States are requested to identify on a continuing basis any unaddressed national policy or related needs in order to incorporate ADR/Conflict Prevention strategies and principles at appropriate steps in natural resources decision-making.
- Funding of Agreements, Staffing: Natural Resources ADR/Conflict Prevention - The Washington Office and the States and appropriate Centers shall continue to fund and support contracts or other agreements and related resources and staffing to meet the statutory and regulatory mandates and the national policy requirements set out in the Bureau’s FY ’06 PTA ADR/Conflict Prevention Program directives and in IM 2004-159.
- Natural Resources ADR-based Collaboratives - All States shall plan and conduct at least one ADR-based stakeholder or citizen-centered collaborative with the objective of preventing, resolving, or mitigating the impacts of a conflict or dispute. Results shall be reported in the Natural Resources ADR Activities Database.

- Office of Hearings and Appeals (OHA)/Interior Board of Land Appeals (IBLA) ADR Case Referral Program - All States shall ensure full implementation of the national policy for handling IBLA Orders issued and requests provided to the Bureau and appellant(s) regarding use of ADR (negotiation or facilitated mediation) for resolving appeals prior to adjudication. The WO Bureau Dispute Resolution Manager shall work closely with OHA/IBLA on needed areas of conformance with the Bureau's national policy and related joint working efforts.
- Litigation, Appeals, and Protests: Natural Resources ADR - All States are encouraged to coordinate with the WO Bureau Dispute Resolution Manager or Dispute Resolution Specialist where a case may have national policy implications in order to obtain national policy input on ADR-based strategies that could help to prevent, mitigate the impacts of, or resolve conflicts **before or after** the filing of litigation or an appeal or protest.
- National ADR/Conflict Prevention Policies, Strategies, and Databases - All States shall participate in the development or implementation of the following upcoming national ADR policy initiatives, through their respective ADR Advisory Council Manager-Advisor, Natural Resources ADR Advisor, or Workplace ADR Advisor, as appropriate:
 - Departmental credentialing requirements for workplace mediation;
 - Bureau credentialing criteria for: Natural Resources ADR Advisors and internal Bureau facilitators;
 - Departmental workplace ADR database;
 - Bureau Natural Resources ADR Activities Database;
 - Roll-out in the BLM of the Departmental workplace ADR program.
- ADR/Conflict Prevention Program Training - All States that have not already conducted ADR training for managers shall identify FY '06 dates when they wish to schedule a session of the Managers' ADR/Conflict Prevention Strategies Symposium. States that are in the process of scheduling the training are considering the option of adding it to a State Leadership Team meeting. **States shall notify Paul Politzer by e-mail as soon as decisions are made on dates for the Managers' training; the instructors will need advance notice.** All States shall ensure that their Natural Resources ADR Advisors attend the advanced ADR strategies dialogue training (to be offered once in FY '06), as well as the NTC's advanced facilitation training. In addition to the NTC's facilitation training, new ADR/Conflict Prevention courses planned for delivery in FY '06 include:
 - on-line training for all "appropriate (resources) staff" as described in IM 2004-159;
 - managers' ADR/Conflict Prevention strategies symposium;
 - advanced ADR strategies dialogue;
 - workplace ADR training.

The NTC provides Bureau-wide notification as soon as the training is available.

- Natural Resources ADR Advisors, Workplace ADR Advisors and Mediators, and ADR Manager-Advisors: Roles and Performance Expectations - States are expected to ensure that Natural Resources and Workplace ADR Advisors and Mediators:
 - fully support, and participate in the development of (as appropriate), the policies and program initiatives of the Bureau's ADR/Conflict Prevention Program;
 - fully represent the policies, interests, and needs of their State Leadership Team;
 - fully participate in the initiatives of the ADR Advisory Council, as a work priority;
 - (Natural Resources ADR Advisors) - ensure timely and complete entry of data on ADR-based collaboratives for the State in the National Natural Resources ADR Activities Database; (Workplace ADR Advisors) – ensure that data is provided for entry (or data is entered) in the Departmental workplace ADR database to be developed
 - (Workplace ADR Advisors) - participate, in a leadership role, in rolling out the Departmental workplace ADR program in the Bureau;

- (Natural Resources ADR Advisors or other representative that the State management team identifies to serve as liaison with the WO regarding OHA/IBLA's ADR case referral program) - serve as the State's liaison and point of contact with the Bureau Dispute Resolution Manager and Dispute Resolution Specialist in the WO on appeals and other administrative actions involving the ADR case referral program and issues relating to the Hearings Division. **States designating another representative to serve as liaison shall notify Paul Politzer by e-mail as soon as possible.**
- (Natural Resources and Workplace ADR Advisors) - ensure that internal Bureau facilitators are informed about new credentialing procedures as set out in the BLM's National Credentialing Policy Criteria for Natural Resources ADR Advisors and Facilitators; maintain a list of internal and external Bureau facilitators in your State;
- (Natural Resources ADR Advisors and Workplace Mediators) - Natural Resources ADR Advisors: obtain certification by attending credentialing training courses set out in the BLM's National Credentialing Policy Criteria for Natural Resources ADR Advisors and Facilitators); certification criteria for workplace mediators will be established by the Department;
- foster opportunities for use of ADR and conflict prevention strategies in the State through briefings and by providing information through other forums such as the State's leadership team;
- ensure that Bureau-required and Department-required ADR training is scheduled and taken in the State; ensure that records of schedules and participants are developed and maintained.

The ADR Manager-Advisors speak for the State Leadership Team in providing policy advice to the Bureau Dispute Resolution Manager, as Chair, ADR Advisory Council, and to the Natural Resources and Workplace Sub-groups of the ADR Advisory Council. Also, the ADR Manager-Advisors foster opportunities for use of ADR in the State and ensure management and staff awareness of ADR principles.

The performance expectations for the Natural Resources ADR Advisors and the Workplace ADR Advisors represent the Bureau's minimum expectations to enable the BLM to fulfill its policy mandates. States shall strongly consider documenting these expectations as well as associated ADR and conflict prevention program accomplishments to ensure availability of Bureau ADR case performance and accomplishment data in order to ensure the Bureau's ability to respond to forthcoming Departmental requests.

- Facilitators Credentialing and Certification - States shall ensure that internal Bureau facilitators obtain necessary NTC or other training to obtain certification as set out in BLM's National Credentialing Policy Criteria for Natural Resources ADR Advisors and Facilitators.
- ADR Manager-Advisors and Workplace ADR Advisors: All States - **Those States that have not nominated an ADR Manager-Advisor and/or a Workplace ADR Advisor as representatives to the Bureau's ADR Advisory Council shall provide such nomination(s) by October 4, 2005, by e-mail, to Paul Politzer.**